

CITY OF SANTA CLARA
CITY COUNCIL ECONOMIC DEVELOPMENT COMMITTEE
"Mission City 21"
Minutes for July 16, 2008 Meeting

Attendance: Council Member Pat Kolstad, Chair
Council Member Dominic Caserta
Council Member Jamie McLeod
Jennifer Sparacino, City Manager
Ron Garratt, Assistant City Manager
Carol McCarthy, Deputy City Manager
Kevin Riley, Director of Planning & Inspection
Pam Morrison, Administrative Analyst to the City Manager
Steve Van Dorn, Santa Clara Chamber of Commerce and Convention-Visitors Bureau

Guests: Jonathan Hughes, UFCW Local 5

Matters for Council Action:

- 1) Refer to the City Manager to move forward with an economic analysis of "big box" retail operations as a priority first study in the General Plan review, and report back to Council with options for an economic policy and criteria/findings for evaluating "big box" proposals.
 - 2) Defer taking action on the regulation of plastic bags until a regional solution is developed, and request the City Manager provide a status report to Council in October 2008.
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- I. The Chair Pat Kolstad called the meeting to order at 5:33 p.m. Introductions were made.
- II. Overview of Staff Reports. The City Manager gave a brief overview of the staff reports regarding the requests for a "Big Box" ordinance and a plastic bag ban in large retail stores.
- III. "Big Box" Ordinance Requested by UFCW Local 5
 - A. An interim "Big Box" policy was approved by Council on June 17, 2008. This means that if a "big box" type project came to Planning Commission, it would automatically go to Council for review and final approval.
 - B. Report on Policy Options. Staff presented a report on the policies of nearby local agencies regarding the regulation of "big box" retail stores. There is no one consistent approach in use; some jurisdictions consider big box retail to be positive in terms of economic development but limit the siting of them to certain zoning districts or locations, while others have zoning ordinance restrictions without specific development policy statements. The City Attorney's Office has advised that if the City chooses to go

forward with an ordinance, it must be worded carefully to state why the ordinance is necessary to protect the zoning scheme of the City. Staff recommends that the Committee recommend the adoption of a definition for "big box" that would go to Council for approval, then on to the City Manager and General Plan Steering Committee for incorporation into General Plan update. A question was raised about whether the City could establish criteria for these businesses that are outside of land use policies. Staff noted that this could be done, and it would require an economic study. Upon completion of the study the City could develop an economic policy, which could be used with land use findings for use permits. It was noted that the City has retained a consultant for the General Plan update, and that there is an economic component in the General Plan update. It would be possible to accelerate the completion of this component by having the consultant focus on it as a priority. It is expected that completion of the economic analysis would take approximately two to three months, and at that point it would be possible to set an interim policy on "big box" retail. Additional refinements to the policy could be made as the General Plan process moved forward.

Council Member McLeod made a motion (seconded by Council Member Caserta) that the committee send this issue on to the City Council, and ask that it be referred to the City Manager, to move forward with an economic analysis of "big box" retail operations as a priority first study in the General Plan review, and report back to Council with options for an economic policy and criteria/findings for evaluating "big box" proposals.

No recommendation was made regarding the establishment of a formal definition of "big box" retail; instead, it was agreed that a definition would be incorporated into the policy.

IV. Plastic Bag Ban in Large Retail Stores Requested by Sierra Club

- A. Staff presented a report on state, regional, and local actions to regulate single-use plastic bags. Current state law requires grocery stores to take back and recycle plastic bags, and pending legislation would strengthen current law by requiring stores to meet phased plastic bag diversion and reduction benchmarks. Four California cities have enacted ordinances that ban plastic bags, one of which has been challenged in court. In Santa Clara County, the Recycling and Waste Reduction Commission's Technical Advisory Committee is working on the development of regional solution, which will most likely be brought forward in 2009 in the form of a model ordinance or policy that can be adopted by each city.

Council Member Caserta made a motion (seconded by Council Member McLeod) that the committee recommend to Council to defer this issue until a regional solution is developed, and request the City Manager provide a status report to Council in October 2008.

- V. City/Chamber Joint Business Recognition. Byington Steel Treating, Inc. is the next business slated for recognition, and the recognition will take place on a mutually agreed upon date, possibly in September.

VI. Miscellaneous Informational Items.

- A. It is expected that an application will come forward shortly for the Yahoo campus development. The development is proposed for 1.4 FAR, with 9,000 to 10,000 employees.
- B. Sun Microsystems is resizing for 2009, and Santa Clara will lose 190 employees.
- C. The relocation of Intel's D2 building to Oregon has been delayed temporarily.

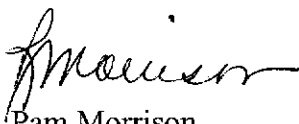
VII. Energy Innovator Awards. The Mayor presented the City's first Energy Innovator Awards at the Silicon Valley Leadership Group Energy Forum on Friday, June 6, 2008. These awards honor both large and small organizations for their support of energy efficiency and renewable energy. It was also noted that the Mayor accepted the American Public Power Energy Innovator Award in New Orleans for outreach to underserved customers.

VIII. Project Updates. Work on the ballroom expansion at the Convention Center is moving along well and is 19 days ahead of schedule. The goal is to ensure the building is encapsulated before the winter rains. Expected completion date is June 2009.

IX. Public Presentations - No public presentations were made.

X. Adjournment - There being no further business, the meeting was adjourned at approximately 6:50 p.m.

Prepared by:



Pam Morrison
Administrative Analyst to the City Manager

Approved:



Jennifer Sparacino
City Manager

Attachment: Memorandum re: Big Box Retail Policies
Memorandum re: Follow-up Information on Plastic Bags

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INTEROFFICE MEMORANDUM

City of Santa Clara



Date: July 11, 2008

To: City Manager

From: Director of Planning and Inspection

Subject: *Mission City 21* Meeting of July 16, 2008 - **Big Box Retail Policies**

Issue Statement

Per the MC21 January meeting recommendation, on June 17, 2008, the City Council directed staff to develop a clear definition of "big box retail" and to explore what other cities have done with respect to ordinances, as well as to include in policy considerations some economic analysis where possible. At the same meeting the Council approved an interim review policy for big box retail proposals to require referral of use permits from the Planning Commission to Council for final decisions for any such proposals.

Overview - Literature and Regulation

Staff has evaluated some professional literature on the big box concept and has explored the regulatory approach of several cities to provide some background for a City policy and/or ordinance. Literature review included a 2004 Bay Area Economic Forum report on the economic impact of supercenters with grocery components on the grocery industry, and American Planning Association (APA) reports on big box retail. The policy and regulatory measures of Sunnyvale, San Jose, Union City, Oakland and Milpitas were explored to compare strategies to deal with these uses.

The APA Planning Advisory Service Report #537, "Meeting the Big Box Challenge" provides a national evaluation of big box retailers, evaluating the definition, practices of these businesses and the regulatory framework to address these operations. The report groups these retailers in 4 general categories and acknowledges a wide range of sizes, generally all above about 20,000 square feet of floor area. Big box definitions from a number of communities were provided, including such terms as "single tenant," "supercenters," "accessory retail uses," "regional-serving," "warehouse," "clubs," etc. The report also notes that some communities identify concerns regarding effects on the local economy and labor market; it is recognized that these economic issues generally fall outside of land use controls, but that they could be addressed by other economic policies.

The Economic Forum report focused on those big box users that incorporate food markets in the uses, such as Wal-Mart supercenters, and the impact upon local grocers and the grocery worker unions in the area. To date, the City of Santa Clara has not had an application for a combined grocery/merchandise enterprise of this scale, although there are a number of warehouse or club style discount retailers in the City (e.g., Costco, Home Depot, Contractor's Warehouse, Smart & Final).

Local agencies that were scanned for policies or regulations were found to include a mix of approaches, but were inconsistent from jurisdiction or even internally with respect to addressing big box retailers in a comprehensive or regular way. Some jurisdictions tout the economic development aspect of these as good sales tax generators, but limit the siting of these to certain zoning districts or specific locations. Some, on the other hand, have ordinance restrictions that limit these to appropriate zones, but without making specific development policy statements.

The following provides a quick overview of big box measures in selected nearby communities:

City	General Plan	Ordinance	Economic Policy
Sunnyvale	ECR Precise Plan has design guidelines for big box retail (typ 25k sq ft w/ single tenant)	C-3 district for large (regional) retail, but big box retail is not defined; Permit required for retail (unspecified) in industrial zones	Not found
San Jose	Not found	Industrial zones allow conditional use of retail or wholesale commercial entity, single occupant greater than 100,000 gross square feet, including off sale of alcohol; no specific definition of big box	Not found
Union City	Promotes <i>Union Landing</i> center for commercial activity for a regional market; GP Land Use policy LU-D.7.1 specifically promotes big box of 100k floor area here	"Discount club" and "clearance center" defined, but no floor area identified; big box not identified	Promotes Union Landing "power center" with (c) 150k sq ft Wal-Mart store as regional center
Oakland	Not found	Large-scale combined grocery and retail over 100k sq ft w/ at least 10% non-tax are <u>excluded</u> from General Retail Sales Activities	Not found
Milpitas	No reference to big box retail	General Commercial District identified, but no references to or definition of big box retail	Not found

Options

Establish a definition of big box retail to determine a minimum size and a descriptive use allowance for these supercenters, such as:

"Retail, big box" means a retail operation of at least **150,000** gross square feet of floor area that involves a single tenant with one or more types of retail services and merchandise, including non-sales tax merchandise such as grocery operations that represent more than 20 percent of the gross floor area.

The City's General Plan does not currently address the big box type of retail, but this could be a part of the General Plan comprehensive update currently underway. Use permits for all retail uses in industrial zones would continue to be required as they are today, but big box retail applications meeting the definition above could be required to receive City Council approval following the Planning Commission's review and recommendation, similar to the current interim Council policy.

Recommendation

That the Committee put forward for Council consideration a definition for big box retail use as "a retail operation of at least **150,000** gross square feet of floor area that involves a single tenant with one or more types of retail services and merchandise, including non-sales tax merchandise such as grocery operations that represent more than 20 percent of the gross floor area," and that the Council refer this definition and related policy considerations to the City Manager and the General Plan Steering Committee for incorporation in the pending comprehensive General Plan Update and the related zoning ordinance amendments that will implement the updated General Plan policies.

City of Oakland
Big Box Retail Regulations

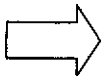
Use Classifications:

17.10.270 "General Food Sales Commercial Activities"

General Food Sales Commercial Activities include the retail sale, from the premises, of food or beverages for home consumption, as well as the retail sale of prepared food or beverages for on-premises consumption, but exclude the activities described in Sections 17.10.280, 17.10.290, and 17.10.300. They also include certain activities accessory to the above, as specified in Section 17.10.040. (Prior planning code § 2360)

17.10.340 "General Retail Sales Commercial Activities"

General Retail Sales Commercial Activities Include the retail sale or rental from the premises (sic), primarily for personal or household use, of goods consisting primarily of items other than food and beverages and convenience items described in Section 17.10.310; but exclude sale or rental of motor vehicles, except for parts and accessories, and sale of materials used in construction of buildings or other structures, except for paint, fixtures, and hardware. They also exclude Large-Scale Combined Retail and Grocery Sales Commercial Activity, as defined in Section 17.10.345. They also include certain activities accessory to the above, as specified in Section 17.10.040. (Ord. 12776 § 3, Exh. A (part), 2006; Ord. 12547 § 3 (part), 2003; prior planning code § 2367)



[Added – Nov 2003]

17.10.345 "Large-Scale Combined Retail and Grocery Sales Commercial Activities"

Large-Scale Combined Retail and Grocery Sales Commercial Activities include the retail sale from the premises of goods and merchandise, primarily for personal or household use, from stores whose total sales floor area exceeds 100,000 square feet, and which devote more than 10% of sales floor area to the sale of non-taxable merchandise, but exclude wholesale clubs or other establishments selling primarily bulk merchandise and charging membership dues or otherwise restricting merchandise sales to customers paying a periodic access fee. This classification excludes the sale or rental of motor vehicles, except for parts and accessories, and the sale of materials used in construction of buildings or other structures, except for paint, fixtures, and hardware. This classification includes certain activities accessory to the above, as specified in Section 17.10.040. (Ord. 12547 § 3 (part), 2003)

General definitions. Municipalities define large merchandise and specialty product big-box retail across a range from 10,000 to more than 200,000 square feet of gross leasable area. Although different names might be used (e.g., "retail sales establishment, bulk"; "retail sales establishment, large"), these definitions all fit the concept of a big-box store. A sampling of typical definitions is as follows:

- A single retail establishment with a building with a gross floor area not less than 25,000 square feet, and which may include fast-food restaurants and other accessory retail uses with an entrance inside the primary retail establishment. (Queen Creek, Arizona)
- A singular retail or wholesale user who occupies no less than 75,000 square feet of gross floor area, typically requires high parking to building area ratios, and has a regional sales market. Regional retail/wholesale sales can include but are not limited to membership warehouse clubs that emphasize bulk sales, discount stores, and department stores. (Redmond, Washington)
- A large-scale (minimum of roughly 100,000 square feet) self-service retail store selling food, drugs, household merchandise, clothing, and a variety of other retail goods. The store may, in some cases, include limited medical services, such as a dentist's office. (Peoria, Illinois)
- A retail structure or group of structures [having] a total in excess of 25,000 square feet of gross floor area. (Concord, North Carolina)
- A retail establishment engaged in selling goods or merchandise to the general public as well as to other retailers, contractors, or businesses, and rendering services incidental to the sale of such goods. Bulk retail involves a high volume of sales of related and/or unrelated products in a warehouse setting and may include membership warehouse clubs, i.e., "big-box" retail. Bulk retail is differentiated from general retail by any of the following characteristics: (1) Items for sale include large, categorized products, e.g., lumber, appliances, household furnishings, electrical and heating fixtures and supplies, wholesale and retail nursery stock, etc.; and may also include a variety of carry out goods, e.g., groceries, household, and personal care products; (2) A large inventory of goods and merchandise is stored on the subject site in high-ceiling warehouse areas, high-rack displays, and/or outdoor storage areas; and (3) High-volume truck traffic, regular pick up and delivery of large items, a designated contractor pick-up area, and high parking-to-building ratios. (Federal Way, Washington)
- A retail establishment, or any combination of retail establishments in a single building, or a movie theater or an indoor recreational use, occupying more than 25,000 square feet of gross floor area, except that no supermarket shall be deemed to be a large retail establishment. (Loveland, Colorado)
- A retail use or any combination of retail uses in a single building, occupying more than 40,000 square feet of Gross Floor Area. (Greeley, Colorado)
- New construction equal to or exceeding 75,000 gross square feet of single plate ground floor and serving a single tenant as a stand-alone retail structure, or as part of a multi-tenant shopping center, or a single plate ground-floor structure serving multi-tenants equal to or exceeding 150,000 gross square feet. (Winston-Salem, North Carolina)

Any business or businesses that involve, in whole or in part, retail and/or wholesale sales, allowed in the applicable zoning district that:

1. share check stands or storage areas,
2. share management, or
3. are owned, leased, possessed or otherwise controlled, in any manner, directly or indirectly,
 - i. by the same individual(s) or entity(ies), including but not limited to corporation(s), partnership(s), limited liability company(ies) or trust(s), or

Source : APD - PMS Report 537, March 2006

TABLE 1. TYPES OF RETAIL BIG-BOX STORES AND AVERAGE SIZE

Type	Web site Address	Number of Stores in the United States (at Year-End 2004)	Avg. sq. Size (in square feet) (est.)	Size Range	Number of New Stores Planned for 2005
GENERAL MERCHANDISE	www.kmart.com	1,422	95,000	40,000 to 194,000	n/a
	www.kmart.com	58	n/a	Up to 194,000	n/a
	www.meijer.com	170	207,000	n/a	9
	www.target.com	141	n/a	n/a	17
	www.target.com	1,189	126,153	n/a	65
	www.walmartrealty.com	1,353	100,000	30,000-220,000	n/a
	www.walmartrealty.com	1,713	187,000	100,000-261,000	n/a
GROCERY	www.kroger.com	2,532	55,687	n/a	Approximately 40
	www.walmartrealty.com	85	43,000	38,000-55,000	n/a
	www.wholefoods.com	168	49,000	40,000-60,000	10
OUTLET	www.biglots.com	1,502	28,600	10,000-50,000	50 to 70
	www.burlingtoncoatfactory.com	349	78,000	20,000-178,000	12
	www.baresandnoble.com	820	27,000	10,000-60,000	30-35
	www.bedbathandbeyond.com	660	n/a	20,000-80,000	Historically opened 85 per year in 03 and 04
	www.bordersgifts.com	504	25,100	n/a	15-20
	www.circuitcity.com	617	n/a	n/a	31
	www.homedepot.com	1,890	106,000 plus 22,000 gar- den area	n/a	n/a
SPECIALIZED PRODUCT	www.kohls.com	637	77,238	n/a	95
	www.lnt.com	440	n/a	25,000-50,000	45-50
	www.lowes.com	1,087	116,000 plus 31,000 garden area	94,000-116,000 plus 26,000-31,000 garden area	n/a
	www.officedepot.com	969	26,000	n/a	100
	www.petsmart.com	726	n/a	19,000-27,000	100
	www.staples.com	1,426	n/a	n/a	95
	www.toysrus.com/about	1,123	46,000	n/a	59
WAREHOUSE CLUB	www.costco.com	417	136,828	70,000-160,000	30
	www.samsclub.com	551	128,000	70,000-160,000	n/a



Interoffice Memorandum

Date: July 11, 2008

To: City Manager for "Mission City 21" Economic Development Committee

From: Administrative Analyst to the City Manager

Subject: Follow-up Information on Written Petition Requesting Ban on Plastic Bags in Large Retail Stores

A Santa Clara resident submitted a petition on behalf of the Sierra Club asking Council to consider "banning the use of plastic bags in large retail stores." Single-use plastic bags have become a topic of consideration recently because of their potential effect on the environment. At the April 1, 2008 Council meeting, Council referred this issue to the City Manager for review by the "Mission City 21" Economic Development Committee. This memo provides information about actions taking place at the state, regional, and local level regarding plastic bags.

State Legislation: AB 2449, effective July 1, 2007, is a six-year pilot program requiring all California grocery stores to take back and recycle plastic grocery bags. The bill also requires retailers to provide consumers with a bag reuse opportunity. Retailers and manufacturers are required to implement a public education program, and all bags must be labeled "Please Return to a Participating Store for Recycling."

AB 2058 (Levine) was introduced in 2008 and is intended to build upon the provisions of AB 2449. AB 2058 would require large grocery stores and pharmacies that distribute free plastic bags to meet phased plastic bag diversion and reduction benchmarks. If these diversion and reduction benchmarks were not met, retailers would be required to charge a 25 cent per bag fee, the proceeds of which would be used for local litter clean-up. AB 2058 has passed in the Assembly and in the Senate Policy and Fiscal Committees. The bill is awaiting a vote on the Senate Floor.

Individual City Ordinances: To date, four California cities have enacted ordinances that ban single-use plastic bags: San Francisco, Oakland, Malibu, and Manhattan Beach. Oakland was sued for failure to satisfy CEQA requirements and was ordered to vacate its adoption of the ordinance until the city complied with CEQA. Manhattan Beach has been threatened with a similar lawsuit. Fairfax proposed an ordinance to ban plastic bags, but withdrew it after being threatened with a lawsuit (Fairfax chose instead to pass a voluntary ban).

The cities of San Jose and Palo Alto both considered ordinances banning plastic bags. The Councils in those two cities recommended that staff work to develop plastic bag reduction programs (Attachment A). San Jose will be holding biweekly stakeholder meetings during the summer to gather input to develop its program. Palo Alto has been asked to return to its Council with recommendations in the near future; stakeholder meetings are currently taking place.

As noted in the City's March 25, 2008 Agenda Report, some cities in Santa Clara County have chosen alternate methods to reduce plastic bag use. These methods focus primarily on

PALO ALTO STAFF RECOMMENDATION TO COUNCIL:

Staff recommends that Council direct staff to:

1. Work with supermarket and pharmacy representatives during April, May and June 2008 to develop a single-use plastic bag reduction program incorporating the increased use of reusable bags; and
2. Return to Council as soon as practical after June 30, 2008 with recommendations for a comprehensive program and ordinance incorporating those recommendations.

Notes regarding Council feedback/comments at meeting:

- Council asked if we were going to address newspapers delivered in plastic bags, or other store plastic film packaging (meat, produce, deli). Those bags are not in the scope of this initial work.
- Some Council members expressed they would support/be open to charging fees for bags. Staff did not engage Council in discussion of what is and not allowed per State law.
- Council would like to take an action as soon as possible.
- Council expressed a strong interest in neighboring cities and the region taking aggressive action to increase reusable bag usage also.
- City Attorney alerted Council to the CEQA issue and Oakland court decision and the need for discussion and decision later on the amount of risk the City would want to assume if they did not want to conduct a full EIR.
- Ryan Kenny, American Chemistry Council addressed Council and spoke in favor of City staff working with supermarket and pharmacy reps over a three month period to create a comprehensive approach.

SAN JOSE STAFF RECOMMENDATIONS TO COUNCIL:

- (a) Direct staff to work with stakeholders on a plan to significantly reduce both plastic and paper carryout bag use in the City, which could include a ban on single-use plastic bags, a City fee on paper bags, and comprehensive efforts by industry and the City to increase the use of reusable bags; the plan will include a phased implementation beginning January 2009.
- (b) Direct staff to promote City residents taking their plastic bags back to retail stores for recycling; discontinue plastic bags as an approved recyclable material in the City's residential Recycle Plus program customer outreach and evaluate discontinuing polystyrene foam food packaging and other hard-to-recycle materials that are usually landfilled at the end of the recycling process.
- (c) Support legislation that would remove any restriction on the City's ability to establish fees on plastic carryout bags or other disposable packaging.
- (d) Direct staff to report back to the Transportation & Environment Committee in September 2008 on the proposed work plan for implementing these recommendations on single-use carryout bags and hard-to-recycle foodservice packaging.

Note: Stakeholder meetings began Jul 2; meetings will be held biweekly during the summer.

INTEROFFICE MEMORANDUM

City of Santa Clara



Date: July 11, 2008

To: City Manager

From: Director of Planning and Inspection

Subject: *Mission City 21* Meeting of July 16, 2008 - **Big Box Retail Policies**

Issue Statement

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Overview - Literature and Regulation

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City of Oakland
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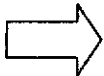
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[Added – Nov 2003]

17.10.345 "Large-Scale Combined Retail and Grocery Sales Commercial Activities"

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	www.target.com	141	n/a	n/a	17
	www.target.com	1,189	126,153	n/a	65
	www.walmartrealty.com	1,353	100,000	30,000-220,000	n/a
	www.walmartrealty.com	1,713	187,000	100,000-261,000	n/a
GROCERY	www.kroger.com	2,532	55,687	n/a	Approximately 40
	www.walmartrealty.com	85	43,000	38,000-55,000	n/a
	www.wholefoods.com	168	49,000	40,000-60,000	10
OUTLET	www.biglots.com	1,502	28,600	10,000-50,000	50 to 70
	www.burlingtoncoatfactory.com	349	78,000	20,000-178,000	12
SPECIALIZED PRODUCT	www.baresandnoble.com	820	27,000	10,000-60,000	30-35
	www.bedbathandbeyond.com	660	n/a	20,000-80,000	Historically opened 85 per year in 03 and 04
	www.bordersgifts.com	504	25,100	n/a	15-20
	www.circuitcity.com	617	n/a	n/a	31
	www.homedepot.com	1,890	106,000 plus 22,000 garden area	n/a	n/a
	www.kohls.com	637	77,238	n/a	95
	www.lnt.com	440	n/a	25,000-50,000	45-50
	www.lowes.com	1,087	116,000 plus 31,000 garden area	94,000-116,000 plus 26,000-31,000 garden area	n/a
	www.officedepot.com	969	26,000	n/a	100
	www.petsmart.com	726	n/a	19,000-27,000	100
	www.staples.com	1,426	n/a	n/a	95
	www.toysrus.com/about	1,123	46,000	n/a	59
WAREHOUSE CLUB	www.costco.com	417	136,828	70,000-160,000	30
	www.samsclub.com	551	128,000	70,000-160,000	n/a



Interoffice Memorandum

Date: July 11, 2008

To: City Manager for "Mission City 21" Economic Development Committee

From: Administrative Analyst to the City Manager

Subject: Follow-up Information on Written Petition Requesting Ban on Plastic Bags in Large Retail Stores

A Santa Clara resident submitted a petition on behalf of the Sierra Club asking Council to consider "banning the use of plastic bags in large retail stores." Single-use plastic bags have become a topic of consideration recently because of their potential effect on the environment. At the April 1, 2008 Council meeting, Council referred this issue to the City Manager for review by the "Mission City 21" Economic Development Committee. This memo provides information about actions taking place at the state, regional, and local level regarding plastic bags.

State Legislation: AB 2449, effective July 1, 2007, is a six-year pilot program requiring all California grocery stores to take back and recycle plastic grocery bags. The bill also requires retailers to provide consumers with a bag reuse opportunity. Retailers and manufacturers are required to implement a public education program, and all bags must be labeled "Please Return to a Participating Store for Recycling."

AB 2058 (Levine) was introduced in 2008 and is intended to build upon the provisions of AB 2449. AB 2058 would require large grocery stores and pharmacies that distribute free plastic bags to meet phased plastic bag diversion and reduction benchmarks. If these diversion and reduction benchmarks were not met, retailers would be required to charge a 25 cent per bag fee, the proceeds of which would be used for local litter clean-up. AB 2058 has passed in the Assembly and in the Senate Policy and Fiscal Committees. The bill is awaiting a vote on the Senate Floor.

Individual City Ordinances: To date, four California cities have enacted ordinances that ban single-use plastic bags: San Francisco, Oakland, Malibu, and Manhattan Beach. Oakland was sued for failure to satisfy CEQA requirements and was ordered to vacate its adoption of the ordinance until the city complied with CEQA. Manhattan Beach has been threatened with a similar lawsuit. Fairfax proposed an ordinance to ban plastic bags, but withdrew it after being threatened with a lawsuit (Fairfax chose instead to pass a voluntary ban).

The cities of San Jose and Palo Alto both considered ordinances banning plastic bags. The Councils in those two cities recommended that staff work to develop plastic bag reduction programs (Attachment A). San Jose will be holding biweekly stakeholder meetings during the summer to gather input to develop its program. Palo Alto has been asked to return to its Council with recommendations in the near future; stakeholder meetings are currently taking place.

As noted in the City's March 25, 2008 Agenda Report, some cities in Santa Clara County have chosen alternate methods to reduce plastic bag use. These methods focus primarily on

educational efforts to increase the use of reusable tote bags, and to encourage reuse and recycling of disposable plastic bags.

City of Santa Clara Efforts: The City has also focused on education efforts to increase public awareness. The City's March 2008 "Green Greener Greenest" publication included information about recycling and encouraging the use of reusable bags. The June 2008 edition of "Inside Santa Clara" promoted the "BYOB" (Bring Your Own Bag) program and encouraged residents to bring bags from home (either reusable totes or plastic/paper bags from previous shopping trips) when going shopping. Reusable tote bags made from recycled plastic bottles were given away at this year's Arbor Day/Earth Day celebration. The City's website and Cable Channel 15 regularly include messages about ways to "think green" and "reduce, reuse, recycle."

Regional Efforts: The Santa Clara County Cities Association (SCCCA) has indicated that it wants to work on a regional solution, working through the Source Reduction and Recycling (SRR) Subcommittee, to reduce or cease the impact of the plastic bags on the environment. SCCCA will be requesting each city to agendize a discussion of reducing single use carryout bags on an upcoming Council agenda. It is anticipated that this regional solution will be brought forward in 2009 in the form of a model ordinance or policy that can be adopted by each city.

The SRR Subcommittee of the Recycling and Waste Reduction Commission's Technical Advisory Committee (TAC) has been discussing the issue of plastic bags for the past several months, and is closely monitoring the efforts of San Jose and Palo Alto. It is expected that any recommendations for a regional solution on plastic bags will come through this committee. City staff members regularly attend these committee meetings, and it is expected that the committee will provide solid, well-reasoned recommendations and policies that the City can support. The next meeting is scheduled for July 24, with a report back to the TAC and the Recycling and Waste Reduction Commission likely to occur in August. It is important to note that the SRR Subcommittee is considering the issue of all single-use plastic containers, not just plastic bags.

Council Member Jamie McLeod is the City's representative to the Recycling and Waste Reduction Commission, and Director of Streets/Automotive Services Rick Mauck serves as the City's representative on the TAC.

Legal Issues: In light of the lawsuit filed against the City of Oakland for implementing a ban on plastic bags, the City Attorney's Office (CAO) was asked to review this issue. According to the CAO, the Court found that the City of Oakland violated CEQA when it failed to complete an EIR prior to enacting the plastic bag ban. In order for Santa Clara to consider adopting an ordinance to ban plastic bags, the City must first comply with all CEQA requirements.

attach: Attachment A, Palo Alto and San Jose Staff Recommendations on Banning Plastic Bags

PALO ALTO STAFF RECOMMENDATION TO COUNCIL:

Staff recommends that Council direct staff to:

1. Work with supermarket and pharmacy representatives during April, May and June 2008 to develop a single-use plastic bag reduction program incorporating the increased use of reusable bags; and
2. Return to Council as soon as practical after June 30, 2008 with recommendations for a comprehensive program and ordinance incorporating those recommendations.

Notes regarding Council feedback/comments at meeting:

- Council asked if we were going to address newspapers delivered in plastic bags, or other store plastic film packaging (meat, produce, deli). Those bags are not in the scope of this initial work.
- Some Council members expressed they would support/be open to charging fees for bags. Staff did not engage Council in discussion of what is and not allowed per State law.
- Council would like to take an action as soon as possible.
- Council expressed a strong interest in neighboring cities and the region taking aggressive action to increase reusable bag usage also.
- City Attorney alerted Council to the CEQA issue and Oakland court decision and the need for discussion and decision later on the amount of risk the City would want to assume if they did not want to conduct a full EIR.
- Ryan Kenny, American Chemistry Council addressed Council and spoke in favor of City staff working with supermarket and pharmacy reps over a three month period to create a comprehensive approach.

SAN JOSE STAFF RECOMMENDATIONS TO COUNCIL:

- (a) Direct staff to work with stakeholders on a plan to significantly reduce both plastic and paper carryout bag use in the City, which could include a ban on single-use plastic bags, a City fee on paper bags, and comprehensive efforts by industry and the City to increase the use of reusable bags; the plan will include a phased implementation beginning January 2009.
- (b) Direct staff to promote City residents taking their plastic bags back to retail stores for recycling; discontinue plastic bags as an approved recyclable material in the City's residential Recycle Plus program customer outreach and evaluate discontinuing polystyrene foam food packaging and other hard-to-recycle materials that are usually landfilled at the end of the recycling process.
- (c) Support legislation that would remove any restriction on the City's ability to establish fees on plastic carryout bags or other disposable packaging.
- (d) Direct staff to report back to the Transportation & Environment Committee in September 2008 on the proposed work plan for implementing these recommendations on single-use carryout bags and hard-to-recycle foodservice packaging.

Note: Stakeholder meetings began Jul 2; meetings will be held biweekly during the summer.